

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4719 of 1998

For Approval and Signature:

Hon'ble THE ACT.C.J. MR K.G.BALAKRISHNAN
and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No @@

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

J J DEVADA

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPEE for Petitioner

MR KM MEHTA, AGP for respondents.

CORAM : THE ACT.C.J. MR K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 20/06/98

ORAL JUDGEMENT

(Per : J.M.Panchal, J.)

Rule. Mr. K.M.Mehta, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

At the request of learned Counsel appearing for the parties, the petition is heard today.

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to declare Section 6(B)(1-A) of the Bombay Home Guards Act, 1947 as ultra vires Articles 14 & 16 of the Constitution. The petitioner has also prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated December 11, 1995 passed by respondent no.3 by which the petitioner was relieved from service with other Home Guards Officers working at Taluka level, and direct the respondents to reinstate the petitioner on his original post.

The petitioner was a member of Home Guards service. Respondent no.3 on the directions of the State Government issued order dated December 11, 1995 relieving all the Home Guards Officers working at Taluka level. That order is produced by the petitioner at Annexure-B to the petition. Some of the Home Guards Officers, who were relieved by order dated December 11, 1995, had challenged the said order in Special Civil Application no. 10600/95 and other allied matters. The High Court allowed the group of petitions and directed reinstatement of the concerned officers on original posts. The petitioner has averred in the petition that in view of the order passed by the High Court, the petitioner requested the respondents to reinstate him in service on his original post, but the respondents asked him to approach the Court. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

At the time of hearing of the petition, the learned Counsel for the petitioner has given-up challenge to the vires of Section 6(B)(1-A) of the Bombay Home Guards Act, 1947. Under the circumstances, prayer made in para-9(A) is rejected as not pressed.

There is no manner of doubt that in view of Government decision dated December 2, 1995, the Home Guards Head Quarters had addressed a letter, which is produced at Annexure-A to the petition, to all the District Commandants to relieve all the Home Guards with immediate effect. By the said letter, Liaison Officer, City Rural Sector 1,2 & 3, Senior Divisional Commander etc. were directed to obtain resignations. The petitioner and others were actually terminated from service at the behest of State Government. It is clear that Rule-8 of the Bombay Home Guards Rules, 1953 provides that the term of the office of the member of Home Guards would be for three years. It also provides that person appointed shall be eligible for reappointment. Section 6(B)(1-A) of the Bombay Home Guards Act, 1947 provides that the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if, in the opinion of the Commandant the services of such member are no longer required. Rule 9(A) of the Rules provides that no member of the Home Guards shall be discharged under section 6(B)(1-A) of the Act unless the Commandant or Commandant General is satisfied that such member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organisation. In the case of A.K.JADEJA vs. STATE OF GUJARAT, JUDGEMENT TODAY 1995(6) S.C. 146, the Apex Court has held that when statutory power is conferred upon one authority and is in substance exercised by another such decision would be ultra vires and void. In the present case, statutory authorities are Commandant and Commandant General and not Government and, therefore, the action taken on the direction of the Government would be ultra vires and void. There is no provision in the Act or Rules which empowers Government to direct termination of services of any member of Home Guards or all the members of the Home Guards as was sought to be done by the impugned decision of the Government. The decision is clearly without authority of law and without competence and, therefore, that decision will have to be quashed and set aside. Similar view is taken in Special Civil Application no. 3502/96 decided by Court (Coram : The Acting C.J. R.A.Mehta and C.K.Thakker,J.) on 27.1.1997 and Special Civil Application no. 5237/97 and other cognate matters decided on 7.10.1997 by Court (Coram : The Acting C.J. R.A.Mehta & S.D.Pandit, J.). Therefore, the petition deserves to be accepted.

For the foregoing reasons, the petition succeeds.

The impugned termination of services of the petitioner is declared to be void and illegal. Annexure-B to the petition is hereby set aside and quashed. The respondents are directed to reinstate the petitioner on his original post within one month from the date of receipt of writ. Rule is made absolute accordingly, with no order as to costs.

(patel)